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12 UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION

15 SPACE DATA CORPORATION,

16 Plaintiff,

17 v.

18 ALPHABET INC., GOOGLE LLC, and
19 LOON LLC,

20 Defendants.

Case No. 5:16-cv-03260-BLF

**PLAINTIFF SPACE DATA
CORPORATION'S OPPOSITION TO
DEFENDANTS' MOTION IN LIMINE
NO. 3 REGARDING LOON AND
SPACE DATA VALUATIONS AND
GOOGLE'S TOTAL SIZE, WEALTH,
AND OVERALL REVENUES**

Date: July 19, 2019
Time: 9:00 a.m.
Judge: Hon. Beth Labson Freeman
Dept.: Courtroom 3 – Fifth Floor

Date Filed: June 13, 2016
Trial Date: August 5, 2019

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1 **I. INTRODUCTION.**

2 Google's Motion *in Limine* No. 3 assumes its premises. Google says that the question
3 of exemplary damages is not for the jury. Google MIL No. 3 at 5:9-24. Google's motion to
4 exclude Google's finances turns on this premise exactly. If Google's premise is wrong, then
5 the motion is wrong. And wrong it is.

6 In a trade secret case tried in federal court on an underlying state statute, whether the
7 defendant's misappropriation was willful and the quantum of exemplary damages are jury
8 questions. The federal courts view these as procedural questions, governed by federal law.
9 These courts have firmly held that the Seventh Amendment requires that these issues go to
10 the jury.

11 Google understood this once. As a trade secret plaintiff in federal court, this is
12 exactly the position Google took in the *Waymo LLC (Google) v. Uber Tech., Inc.* case before
13 Judge Alsup. *See* § II, below.

14 Given that the fact and quantum of exemplary damages go to the jury, the evidence
15 Google seeks to exclude is a required element of Space Data's case. Putting this evidence on
16 is not volitional; it is required. *See* § II, below.

17 **II. THE LAW: THESE ARE JURY QUESTIONS IN FEDERAL COURT.**

18 While the Ninth Circuit has not addressed the question of whether a federal jury
19 determines the entitlement and quantum of exemplary damages, other courts have. In *Jones*
20 *v. United Parcel Service, Inc.*, a case Google relied on extensively in the *Waymo* dispute, the
21 court found that the jury decided both questions as federal law governed, and the Seventh
22 Amendment right to jury trial, as indicated by Supreme Court decisions, "includes the right
23 to a jury determination regarding the amount of punitive damages." *See Jones v. United*
24 *Parcel Service, Inc.*, 674 F. 3d 1187, 1206 (10th Cir. 2012) (addressing the federal punitive
25 damages jury right in the context of a state retaliatory discharge claim). The Fourth Circuit
26 addressed this precise question, in the context of Maryland's trade secret statute, and reached
27 exactly the same conclusion. *See Trandes Corp. v. Guy F. Atkinson Co.*, 996 F.2d 655, 666
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1 (4th Cir. 1993) (“Although [defendant] correctly interprets [MUTSA], it overlooks the fact
 2 that, in federal court, any award of punitive damages presents a factual question that must be
 3 resolved by the jury. Consequently, the district court properly submitted the issue of punitive
 4 damages to the jury”).

5 Google understood this point once. In the *Waymo* case, and as a trade secret plaintiff
 6 in federal court, Google insisted that the jury decide the amount of exemplary damages. *See*
 7 Declaration of Spencer Hosie (“Hosie Dec.”), Ex. 29 (Waymo’s Submission in Response to
 8 Defs. Br. on the Penultimate Jury Instructions) at 3:28 (“The Seventh Amendment requires
 9 that the jury decide the amount of exemplary damages”), 4:1-14 (discussing *Jones*) & 4:24-
 10 25 (“The California rule assigning exemplary damages to the jury is procedural, not
 11 substantive”).

12 The cases Google cites do not address the issue of whether federal or state procedural
 13 law governs the right to jury trial in federal court. Both cases involve post-verdict requests
 14 for CUTSA enhancement, which begs the issue. *See Mattel, Inc. v. MGA Entm’t, Inc.*, 801 F.
 15 Supp. 2d 952, 952 (C.D. Cal. 2011); *O2 Micro Int’l Ltd. v. Monolithic Power Sys., Inc.*, 399
 16 F. Supp. 2d 1064, 1068 (N.D. Cal. 2005).

17 On DTSA, Google will argue that the statute uses the word “court.” But this word is
 18 used to describe the basic determination of relief, including underlying damages. *See* 18
 19 U.S.C. § 1836(b)(3) (“REMEDIES ... a court may ... award ... damages for actual loss
 20 caused by the misappropriation ... damages for any unjust enrichment ... award exemplary
 21 damages ...”). (In this regard DTSA’s language and structure departs from CUTSA’s.) It is
 22 beyond dispute that the jury determines the basic entitlement to compensatory damages, and
 23 hence the word “court” cannot mean what Google says it means. In analogous situations, the
 24 U.S. Supreme Court has upheld a federal plaintiff’s right to a jury trial on **all** aspects of
 25 punitive damages. *See Feltner v. Columbia Pictures Television, Inc.*, 523 U.S. 340 (1998)
 26 (holding that despite the use of the word “court” in Section 504(c) of the Copyright Act,
 27 plaintiff had a Seventh Amendment right to a jury trial “on all issues pertinent to an award of
 28

1 statutory damages”) (Section 504(c) includes an enhancement provision); *Curtis v. Loether*,
 2 415 U.S. 189, 195 (1974) (“We think it is clear that a damages action under [Section 812 of
 3 the Civil Rights Act] is an action to enforce ‘legal rights’ within the meaning of our Seventh
 4 Amendment decisions ... More important, the relief sought here—actual and punitive
 5 damages—is the traditional form of relief offered in the courts of law”). (Additionally, the
 6 Eleventh Circuit’s DTSA pattern jury instructions gives the amount question to the jury. *See*
 7 *Hosie Dec.*, Ex. 30).

8 In short, as Google itself has robustly advocated, the fact and quantum of exemplary
 9 damages both go to the jury. Under California substantive law, Space Data must put in
 10 evidence of Google’s financial condition as a required element of Space Data’s case. *See*
 11 *Robert L. Cloud & Assc., Inc. v. Mikesell*, 69 Cal. App. 4th 1141, 1151 (1999) (“[Defendant]
 12 challenges the award of punitive damages by correctly pointing out that ... an award of
 13 punitive damages must be supported by meaningful evidence of the defendant’s financial
 14 condition”); *O2 Micro.*, 399 F. Supp. 2d at 1079; *Mattel*, 801 F. Supp. 2d at 953.

15 **III. SPACE DATA’S ENTERPRISE VALUE.**

16 Google also seeks to exclude evidence going to Space Data’s enterprise value.
 17 Google MIL No. 3 at 4:3-13. Google says that this evidence is irrelevant and a 403
 18 distraction. But Google will tell the jury that Space Data is a failed company pursuing this
 19 case as a lottery ticket to revive a business otherwise lost.

20 Space Data is not a failed company. It has a robust ongoing business, and owns
 21 extraordinarily valuable spectrum. If Google wants to argue that Space Data is a failed
 22 company, then surely Space Data has the right to prove Google wrong by referring to Space
 23 Data’s own economic circumstances.

24 **IV. LOON PROJECTIONS AND INVESTMENT.**

25 Loon finally argues that Loon’s financial projections and Google’s investment in
 26 Loon should be excluded as irrelevant and prejudicial. *See* Google MIL No. 3 at 3:26-28.
 27 But Google will argue that Space Data had no trade secrets, in part because nothing Space
 28

1 Data knew had independent economic value. To quote Google:

2 As to the Trade Secret claims, Google identifies the following disputed facts
3 for trial:

4 4. Whether and to what extent the Trade Secrets confer an actual or potential
5 business advantage over others who do not know the Trade Secrets and who
6 could obtain economic value from their disclosure or use.

7 5. Whether and to what extent the Trade Secrets are, or would be valuable to
8 Space Data's competitors.

8 ***

9 8. Whether Space Data's alleged Trade Secrets derive independent economic
10 value, actual or potential, from not being generally known to the public or to
11 other persons who could obtain economic value from their disclosure or use.

11 Hosie Dec., Ex. 11 (Joint Pretrial Statement) at 28-29.

12 Loon's projections impeach this Google position directly. When owned by Space
13 Data, the trade secrets had no value. When owned by Loon, they had great value. This is
14 classic impeachment which should not be kept from the jury.

15 Similarly, Defendants argues that Space Data did not exercise reasonable efforts,
16 because it did not recover every landed payload. *Compare* Hosie Dec., Ex. 11 (Joint Pretrial
17 Statement) at 6:22-23 ("Defendants contend that Space Data has not taken reasonable efforts
18 under the circumstances to maintain the secrecy of its alleged trade secrets. ECF 465
19 [Answer] at 71") *with* Hosie Dec., Ex. 10 (Answer) at 71 ("Space Data has not taken
20 reasonable efforts ... [t]he platform is freely available for inspection by any member of the
21 public who encounters it once it has landed"). But Defendants [REDACTED]

22 [REDACTED] *See* Hosie Dec., Ex. 29 (Teller Dep.), 7:15-8:5 & 10:14-21. As Defendants
23 have unlimited resources, Loon's [REDACTED] seems good evidence that
24 Space Data's efforts, as a smaller company, are reasonable.

25 Dated: June 25, 2019

Respectfully submitted,

26 /s/ Spencer Hosie

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